

Message Text

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R 262022Z JUL 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 0114
USMISSION USBERLIN
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
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C O N F I D E N T I A L SECTION 01 OF 04 BONN 12295

E.O. 11652: GDS
TAGS: PGOV BQG
SUBJECT: TRIAL OF LORENZ/DRENCKMANN TERRORISTS IN
BERLIN

REFS: (A) BONN 12099; (B) USBER 350; (C) 76 BONN 13126;
(D) 76 BONN 12111

BEGIN SUMMARY. ALLIED BONN GROUP REPS HAVE ONCE MORE
STRESSED IN STRONG TERMS TO THE FRG THE IMPORTANCE OF
DISCRETION ON THE PART OF FEDERAL PROSECUTING AUTHORITIES
IN THEIR PUBLIC COMMENTS CONCERNING FEDERAL COMPETENCE
IN THE PROSECUTION OF THE LORENZ KIDNAPPERS AND
ASSOCIATED TERRORISTS. AGREEMENT WAS
REACHED ON GUIDANCE TO BE USED BY FRG PRESS SPOKESMEN
IN ANSWERING QUERIES CONCERNING THE CONTENTION OF DEFENSE
ATTORNEYS THAT HOLDING THE TRIAL IN WEST BERLIN IS A
VIOLATION OF THE QUADRIPARTITE STATUS OF THE
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CITY. COMMENTS FROM USBER ARE REQUESTED WITH REGARD
TO THESE DEFENSE CLAIMS AND TO THE LINE ALLIED SPOKESMEN
SHOULD TAKE IN COMMENTING ON THEM. END SUMMARY.

1. FRESH PUBLICITY CONCERNING THE LEGAL ASPECTS OF
PROSECUTION OF THE LORENZ CASE IN BERLIN BY FEDERAL
AUTHORITIES PROMPTED ALLIED REPS TO ASK FOR A SPECIAL

BONN GROUP MEETING FOR THE PURPOSE OF URGING THE FRG REPS TO CAUTION THE AUTHORITIES CONCERNED. A JULY 23 ARTICLE IN THE GENERAL ANZEIGER (GA) REPORTED THAT, "AFTER STRICTLY SECRET CONSULTATIONS" BETWEEN THE THREE ALLIES AND THE FRG THERE WAS NOW A GREEN LIGHT FOR HOLDING THE TRIAL IN BERLIN, THUS ENDING THE SPECULATION AS TO WHETHER THE TRIAL MIGHT BE HELD IN DUSSELDORF OR SOME OTHER CITY IN THE FRG.

2. THE GA ARTICLE -- DATELINED KARLSRUHE, THE SEAT OF THE FEDERAL PROSECUTOR'S OFFICE -- POINTED OUT THE RELEVANCE OF THE CHOICE OF VENUE TO EAST-WEST TENSIONS AND NOTED THAT PARTICULARLY EXPLOSIVE WAS THE QUESTION OF THE ROLE OF THE FEDERAL PROSECUTOR GENERAL. ALLUDING TO ALLIED FEARS OF SOVIET PROTESTS, GA ALSO REFERRED TO POSSIBLE DIFFICULTIES IN THE TAKING OF TESTIMONY FROM MEMBERS OF THE FEDERAL GOVERNMENT, POSSIBLY EVEN THE CHANCELLOR HIMSELF.

2. MOST OF THESE DOUBTS, ACCORDING TO GA, HAVE BEEN RESOLVED. THERE REMAINS OPEN, HOWEVER, THE QUESTION OF WHETHER NEWLY-APPOINTED FEDERAL PROSECUTOR GENERAL KURT REBMANN WILL PERSONALLY APPEAR IN THE CASE AS CHIEF PROSECUTOR -- A POSSIBILITY HIS PREDECESSOR (THE LATE SIEGFRIED BUBACK) HAD NOT EXCLUDED.

4. AFTER CONSULTATION WITH THE UK AND FRENCH REPS, AT CONFIDENTIAL

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THE JULY 26 BONN GROUP MEETING THE US REP, AS CHAIRMAN, MADE THE FOLLOWING POINTS:

-- OVER THE PAST TWO AND ONE HALF YEARS THE BONN GROUP HAS HAD EXTENSIVE DISCUSSIONS OF THE HANDLING OF THIS CASE. ALL FOUR MEMBERS OF THE BONN GROUP HAVE PROCEEDED WITH THE COMMON OBJECTIVES OF (A) ASSURING THAT THOSE RESPONSIBLE FOR THE TERRORIST CRIMES IN QUESTION ARE PROSECUTED AND CONVICTED, AND (B) ASSURING IN THE PROCESS THAT THIS IS DONE IN A MANNER WHICH DOES NOT HARM THE LONG RANGE INTERESTS OF BERLIN.

-- WE HAVE RECOGNIZED ALL ALONG THAT IF THE TRIAL IS HELD IN BERLIN THERE WILL BE FURTHER SOVIET PROTESTS AND THAT THE ENTIRE AREA OF FEDERAL COURT ACTIVITIES IN BERLIN IS A VERY SENSITIVE ONE, IN VIEW OF CONFLICTING INTERPRETATIONS OF THE QA.

-- THE ALLIED NON-PAPER OF JULY 16, 1976 (REF D) WAS AIMED, FIRST OF ALL, AT ASCERTAINING WHETHER IT WAS ESSENTIAL THAT THE TRIAL BE HELD IN BERLIN AND, IF SO,

AT TAKING AS MANY DAMAGE-LIMITING PRECAUTIONS AS
POSSIBLE.

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-- THE ALLIES HAVE BEEN INFORMED OF THE FRG
DECISION TO HOLD THE TRIAL IN BERLIN. THE BONN GROUP HAS
HAD FREQUENT DISCUSSIONS OF WHETHER THE TRIAL "MUST"
BE HELD IN BERLIN IF IT IS TO BE AN EFFECTIVE
PROSECUTION, OR WHETHER IT IS SIMPLY A MATTER OF SAYING
THAT THE TRIAL "MAY" LEGALLY BE HELD IN BERLIN. TO BE
PREPARED FOR FURTHER SOVIET PROTESTS, IT WOULD BE
HELPFUL TO HAVE A CLEAR STATEMENT OF GERMAN LAW ON THE
SUBJECT. IF SUCH A STATEMENT COULD DEMONSTRATE THAT A
TRIAL OUTSIDE BERLIN WOULD MAKE IT IMPOSSIBLE TO
PROSECUTE THE ACCUSED FOR ALL OF THE OFFENSES IN
QUESTION, THIS MIGHT BE A MORE EFFECTIVE ANSWER TO THE
SOVIETS THAN A DETAILED ARGUMENT OVER INTERPRETATION
OF THE QA.

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-- MEANWHILE, WE RECALL THAT THE PROVISION OF THE 1976 NON-PAPER THAT THE AFFAIR SHOULD BE HANDLED WITH PARTICULAR RESERVE AND DISCRETION, ESPECIALLY IN RELATION TO THE PRESS, WAS OF COEQUAL IMPORTANCE WITH THE OTHER ELEMENTS IN THAT PAPER.

-- THE RECENT PUBLICITY SUGGESTS THAT THE NEW FEDERAL PROSECUTOR GENERAL MAY NOT BE AWARE OF THE AGREEMENTS REACHED IN 1976, AND THAT OFFICIALS IN KARLSRUHE ARE MORE CONCERNED WITH THE FIRST OBJECTIVE MENTIONED ABOVE THAN WITH THE SECOND OBJECTIVE OF AVOIDING COMPLICATIONS FOR THE BERLIN SITUATION.

-- PART OF THE AGREEMENT REACHED IN 1976 (REF C) WAS THAT THE "INDICTMENTS WILL BE HANDED DOWN IN BERLIN." WE REALIZE THAT WE DID NOT SPECIFICALLY ASK WHO WOULD SIGN THE INDICTMENTS, AND THEREFORE WE DO NOT MAKE AN ISSUE OF THE WAY IT WAS HANDLED ON JULY 25 IN THE BERLIN KAMMERGERICHT. OUR ASSUMPTION, HOWEVER, HAD BEEN THAT THE INDICTMENTS WOULD BE SIGNED BY THE HEAD OF THE BERLIN OFFICE OF THE FEDERAL PROSECUTOR AND NOT, AS WAS DONE, BY THE ACTING FEDERAL PROSECUTOR GENERAL IN KARLSRUHE.

-- WE WOULD BE GRATEFUL IF THE FOREIGN OFFICE WOULD TAKE WHATEVER STEPS ARE NECESSARY TO STRESS WITH THE MINISTRY OF JUSTICE AND THE OFFICE OF THE FEDERAL PROSECUTOR THE NEED FOR DISCRETION, PARTICULARLY IN DEALINGS WITH THE PRESS.

5. DURING THE MEETING, WE RECEIVED COPIES OF DPA TICKERS REPORTING ENTRY OF THE INDICTMENTS IN THE BERLIN KAMMERGERICHT ON JULY 26 AND NOTING THAT THE DEFENSE
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ATTORNEYS WERE CLAIMING THAT PROSECUTION BY THE FEDERAL PROSECUTOR IN A BERLIN COURT WAS VIOLATION OF THE QUADRIpartite STATUS OF THE CITY (THIS CLAIM BY DEFENSE COUNSEL HAD ALREADY BEEN PUBLICIZED IN JULY 26 NEWSPAPERS). DPA QUOTED REBMANN AS STATING THAT HE WAS CONVINCED THAT THE SOVIETS WOULD NOT PROTEST, AS FOR THE PAST TWO YEARS CERTAIN CONSULTATION MECHANISMS HAD BEEN USED TO ELIMINATE THE POSSIBILITY OF PROTESTS TO THE ALLIES. ALLIED REPS COMMENTED THAT THIS STATEMENT BY REBMANN SERVED TO

REINFORCE THE POINT THE US REP HAD JUST
BEEN MAKING.

6. FRG REP (LUECKING) STATED EMPHATICALLY THAT HE AND

THE FOREIGN OFFICE FULLY AGREED WITH THE POINTS MADE BY
THE CHAIRMAN. HE STATED THAT HE HAD ALREADY INFORMED THE
MINISTRY OF JUSTICE THAT THE ALLIES HAD REQUESTED A
SPECIAL MEETING BECAUSE OF THE JULY 23 PRESS ARTICLE AND
SAID THAT HE WOULD NOW FOLLOW UP WITH A MEMO TO THE
MINISTRY OF JUSTICE, EXPRESSING IN STRONG TERMS HIS
AGREEMENT WITH THE POINTS MADE BY THE ALLIES.

7. AS FOR SPECIFIC POINTS OF THE US PRESENTATION,
LUECKING SAID THAT HE SAW THE POINT ON THE QUESTION OF
HAVING A CLEAR UNDERSTANDING ON WHETHER IT WAS INDIS-
PENSABLE TO HAVE THE TRIAL IN BERLIN. ALTHOUGH HE WAS
NOT CERTAIN THAT ANYTHING COULD BE ADDED TO PREVIOUS
DISCUSSIONS ON THIS SUBJECT, HE UNDERTOOK TO HAVE A
FRESH LOOK AT THE QUESTION. AS FOR WHO HAD SIGNED THE
INDICTMENTS, VON ARNIM (FRG) REITERATED A VIEW WHICH
HAD PREVIOUSLY BEEN EXPRESSED BY THE FRG IN THE BONN
GROUP: THAT LEGALLY THE OFFICE OF THE FEDERAL
PROSECUTOR -- THE BUNDESANWALTSCHAFT -- IS INDIVISIBLE
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AND IT IS NOT POSSIBLE TO MAKE THE BERLIN OFFICE APPEAR
AS SOMETHING DISTINGUISHABLE.

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8. US REP REQUESTED CONFIRMATION THAT ALL PROSECUTING OFFICIALS TAKING PART IN THE TRIAL WOULD BE FROM THE BERLIN OFFICE OF THE FEDERAL PROSECUTOR. LUECKING CONFIRMED THAT THIS WAS SO, ALTHOUGH HE THOUGHT SOME OF THEM WOULD BE ASSIGNED THERE ON A TDY BASIS BECAUSE OF LACK OF EXPERTISE OF THE REGULAR BERLIN PERSONNEL IN SUCH TRIALS. UK REP (EYERS) THOUGHT THAT THE MANNER IN WHICH PERSONNEL FROM KARLSRUHE WERE ASSIGNED TO BERLIN WAS IMPORTANT -- WHETHER BY TRANSFER ASSIGNMENT PUBLISHED IN A LEGAL GAZETTE OR SIMPLY IN PECTORE. US REP STATED IT WOULD BE HELPFUL TO HAVE THE NAMES OF THE OFFICIALS WHO WERE TO CONDUCT THE TRIAL, AND LUECKING UNDERTOOK TO PROVIDE THEM.

9. IN ASSOCIATING HIMSELF WITH THE EARLIER REMARKS OF
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THE US REP, EYERS COMMENTED THAT WE HAD ALREADY DEVIATED RATHER FAR FROM THE FIRST POINT OF THE 1976 ALLIED NON-PAPER -- THAT THE FEDERAL PROSECUTOR GENERAL WAS NOT TO BE INVOLVED IN THE CASE PUBLICLY. STATING THAT HE REALIZED THE PROBLEMS WHICH THE FOREIGN OFFICE HAD IN DEALING WITH KARLSRUHE, EYERS CONTINUED THAT WE SEEMED TO BE BUILDING UP TO A MAJOR POLITICAL PROBLEM BECAUSE OF THE INTRANSIGENCE OF OFFICIALS THERE. HE WAS COMING MORE AND MORE TO BELIEVE THAT IT WOULD BE NECESSARY FOR THE ALLIES TO MAKE SOME SORT OF PUBLIC STATEMENT -- A POSSIBILITY MENTIONED IN THE 1976 NON-PAPER -- TO THE EFFECT THAT FEDERAL AUTHORITIES ACTING IN BERLIN DID SO UNDER ALLIED CONTROL. HIS CONCERN WAS HEIGHTENED, HE SAID, BY VON ARNIM'S STATEMENT ON THE INDIVISIBILITY OF THE BUNDESANWALTSCHAFT. IF IT SHOULD TURN OUT THAT GERMAN LAW WOULD NOT ALLOW THE POINTS IN THE ALLIED NON-PAPER TO BE MET IN A

SUBSTANTIVE WAY, THE ALLIES WOULD HAVE TO CONSIDER WHAT STEPS THEY SHOULD TAKE.

10. FRENCH REP (RICHARD) STATED THAT HE FULLY SHARED THE CONCERNS WHICH HAD BEEN EXPRESSED BY THE US AND UK REPS. LUECKING ONCE MORE ASSURED THE GROUP THAT THESE WOULD BE PASSED ON PROMPTLY TO THE JUSTICE MINISTRY.

11. LUECKING ALSO STATED THAT THE PRESS SECTION OF THE FOREIGN OFFICE WAS BEING QUERIED CONCERNING THE CLAIM OF THE DEFENSE ATTORNEYS THAT HOLDING THE TRIAL IN BERLIN WOULD BE A VIOLATION OF THE FOUR POWER STATUS OF THE CITY. ALLIED REPS AGREED TO THE FOLLOWING PRESS LINE TO BE USED BY THE FOREIGN OFFICE SPOKESMEN IN RESPONSE TO SUCH QUESTIONS:

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"THE TRIAL WILL BE CONDUCTED IN CONFORMITY WITH THE LAW IN FORCE IN BERLIN, WHICH COMPRISES ALLIED LEGISLATION AND LEGISLATION TAKEN OVER BY THE BERLIN HOUSE OF REPRESENTATIVES IN ACCORDANCE WITH ESTABLISHED PROCEDURES."

12. AS CONTINGENCY GUIDANCE FOR A FOLLOW-UP QUESTION AS TO WHETHER THE THREE ALLIES HAVE BEEN CONSULTED, THE FOREIGN OFFICE WILL STATE:

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C O N F I D E N T I A L SECTION 04 OF 04 BONN 12295

"ALL QUESTIONS OF CURRENT INTEREST CONCERNING
BERLIN ARE DISCUSSED BY THE FEDERAL
AUTHORITIES WITH THE THREE PROTECTING POWERS. BUT
AS YOU KNOW, THE CONTENT OF THESE DISCUSSIONS IS
ALWAYS KEPT CONFIDENTIAL."

13. IF PRESSED FOR A VIEW ON THE COMPATIBILITY OF THE
TRIAL WITH THE STATUS OF BERLIN, THE FOREIGN OFFICE WILL
REFER QUESTIONERS TO THE THREE ALLIES.

14. ALLIED REPS RECOGNIZED THAT THERE WOULD SOON BE A
NEED FOR SUPPLEMENTARY GUIDANCE FOR ALLIED
SPOKESMEN BUT THOUGHT THIS NEED NOT BE DEVELOPED AT
TODAY'S MEETING. THERE WAS A TENTATIVE BELIEF THAT
IT MIGHT BE NECESSARY TO REFER TO THE FACT THAT, IN
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EXERCISING HIS COMPETENCE IN BERLIN, THE FEDERAL
PROSECUTOR WAS SUBJECT TO ALLIED AUTHORITY, BUT THAT
WORDING OF SUCH A STATEMENT WOULD REQUIRE FURTHER
THOUGHT. ALLIED REPS RECALLED THAT DEFENSE ATTORNEYS
HAD RAISED A SIMILAR OBJECTION IN CONNECTION WITH THE
PROSECUTION OF HORST MAHLER IN 1972 (REF B), BUT THEY
WERE UNCERTAIN HOW THE ISSUE HAD BEEN HANDLED
AT THAT TIME.

15. ACTION REQUESTED: IN ANTICIPATION OF FURTHER
TRIPARTITE DISCUSSIONS HERE, WE WOULD APPRECIATE FURTHER
INFORMATION FROM USBER ON THE DEFENSE OBJECTIONS AND
ON ALLIED PRESS HANDLING OF THEM.
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